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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Revision of the Commission's Rules)
to Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)

CC Docket No. 94-102
RM-8143

ORIGINAL

To: The Commission

REPLY OF RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ hereby submits its Reply to Comments on its Petition for Reconsideration of the Commission's Second Memorandum Opinion and Order ("Second MO&O") in the above-captioned proceeding.²

The Second MO&O amends the existing rules by eliminating a critical precondition for implementation of E-911 service, that a carrier cost recovery mechanism be in place. RCA's petition for reconsideration seeks reversal of this fundamental change in the rules, which unduly burdens small and rural carriers and their customers.

CorrComm, L.L.C. ("CorrComm"), a small CMRS provider, also filed a petition seeking reversal of the FCC's decision to eliminate the funding mechanism precondition. CorrComm estimated that E-911 implementation would cost \$25,000 per cell cite, with an additional

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 100 rural and small metropolitan markets where approximately 13 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA currently includes rural PCS carriers, as well.

² 64 Fed. Reg. 72951 (Dec. 29, 1999).

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\$400,000 for hardware and software modifications to its switch, as well as \$44,240 in monthly recurring costs for DSO, trunks to PSAPs and service bureau costs.³ This represents a 100% increase in investment in plant "with no corresponding increase in productivity and no increase whatsoever in anticipated revenue," according to CorrComm.⁴

As demonstrated by CorrComm, such a significant cost would indeed be burdensome to small, rural carriers, which have finite resources and a small subscriber base. As CTIA points out, all carriers will be burdened by implementing E-911 service in the manner the FCC has prescribed without a cost recovery mechanism in place.⁵ It is a common sense corollary that carriers serving more sparsely populated rural areas will be more adversely affected by the FCC's decision to eliminate a carrier cost recovery mechanism, since their costs are spread over a smaller subscriber base than carriers serving urban markets. "That an exogenous increase in a rural wireless carrier's access and/or air time rates is likely to have a substantial detrimental effect on demand revenues and profits appears self-evident."⁶ Moreover, as CorrComm correctly points out, E-911 service is a public service, befitting public support.⁷

³ CorrComm Petition at p.2.

⁴ CorrComm Petition at p.3. As CorrComm notes, E-911 service must be afforded to all, regardless of whether they are customers of the carrier. *Id.* At p.6.

⁵ See CTIA Comments.

⁶ DIGIPh Comments at p.5.

⁷ CorrComm Petition at pp. 4-6.

APCO claims inaccurately and without support that: the cost is minimal, the cost disparity between urban and rural subscribers is minimal, and that the FCC's rule change has no effect on whether a state will choose to implement a cost recovery method. It is clear from the record in this proceeding that the cost of E-911 implementation is significant. Why else would the cost recovery issue be an obstacle to implementation? APCO acknowledges that absent a cost recovery method, "carriers will recover their costs directly from their subscribers."⁸ What APCO fails to acknowledge is that this is the problem, not the solution.

APCO ignores the fact that, by definition, carriers serving rural and small metropolitan areas have fewer subscribers than carriers serving larger, metropolitan markets. The simplistic suggestion that "carriers will recover their costs directly from their subscribers" merely glosses over the competitive disadvantage that smaller carriers will suffer because their costs per subscriber are dramatically higher than those experienced by larger carriers, who can more easily absorb E-911 related costs or pass them on to individual subscribers in much smaller increments. Smaller carriers, currently meeting significant competition, are forced to face the conundrum of instituting substantial per-subscriber rate increases or absorbing potentially crippling capital and recurring costs to ensure that their rates remain competitively attractive to consumers. Small carrier profitability, and viability, is therefore threatened.

Fundamental fairness requires meaningful consideration of the historical and evolving circumstances of small and rural wireless service providers. The Commission created cellular rural service areas and mandated geographic, not population, coverage requirements for this

⁸ APCO Comments at p.2.

service. Rural cellular carriers undertook the challenge and risked the capital to provide service under these rules. Similarly, small and rural PCS carriers in sparsely populated areas must also invest more capital on a per-subscriber basis both to meet coverage requirements and to provide significant coverage in the more rural areas. It is clearly inequitable for the Commission to force the Hobson's choice on small and rural carriers of risking their competitive position or their profitability, particularly where the Commission has abandoned the concept of public funding for a public safety purpose without justification or support in the record.

As for the disparity of the cost burden between urban and rural carriers, APCO claims that the per-subscriber cost disparity of E-911 implementation between urban and rural carriers "may be nonexistent."⁹ APCO bases its conclusion on the fact that for carriers utilizing handset-based technologies, E-911 implementation costs are largely associated with the cost of modifying the handset. Even assuming, *arguendo*, that a handset solution does not require the plant investment and other costs cited by CorrComm, *supra*, it presumes that carriers opt for a handset-based solution. Even if a handset solution is less costly than a network-based solution, it is still a burdensome cost to impose on small carriers in the absence of a cost recovery mechanism.

Furthermore, many carriers are concerned that a handset solution may result in technical difficulties in meeting the Commission's accuracy and reliability standards, particularly in buildings or other enclosed areas. Where a network-based solution is required to overcome these obstacles, the capital costs of implementation in rural areas will be significantly greater because

⁹ Opposition of APCO at p.3.

the underlying system was engineered and designed as a communications network, as opposed to a location network.

If APCO's sole interest is to avoid delay in implementing E-911, its efforts would be better spent advocating for state or local cost recovery mechanisms that would enable small, rural carriers to implement E-911 service as expeditiously as possible, rather than imposition of costs that could threaten the very existence of carriers, particularly small carriers serving rural areas, where wireless communication is viewed as a necessity. APCO is not serving the public interest by advocating a course of action that could lead to the demise of small, rural carriers or burden rural subscribers to such a degree that the cost of wireless communications would be prohibitive.

RCA also agrees with CorrComm that the FCC's assessment of the impact of its rule change pursuant to the Regulatory Flexibility Act missed the mark factually and legally. The burden on small carriers of self-recovery is evident, substantial, and potentially devastating. The FCC has the legal authority to address the burdensome impact on small companies, but chose not to, thereby disregarding both the concerns of the small business wireless industry, and the promotion of advanced services in rural areas.

For the foregoing reasons, and based on the overwhelming support in the record for reversal of the FCC's decision to eliminate the carrier cost recovery precondition for E-911 implementation, RCA strenuously urges the Commission to reinstate the carrier cost recovery

mechanism, or, alternatively grant RCA's request for relief for small, rural carriers, for whom individual cost recovery will be an enormous burden.

Respectfully submitted,

RURAL CELLULAR ASSOCIATION

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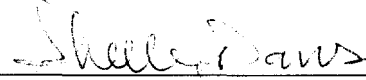
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April 5, 2000

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply of Rural Cellular Association" was served on this 5th day of April 2000, by first class, U.S. Mail, postage prepaid to the following parties:



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